FOR THE JUNIORS.

Falsely publishing that a person would be an anarchist if he thought it would pay is held in *Lewis v. Daily News Company* (Md.) 29 L. R. A. 59, to be libelous because it imputes the possession of moral obliquity and turpitude, which would cause all honest and upright people to shun the person thus stigmatized.

A statute prohibiting the employment of females more than eight hours per day or forty-eight hours per week in any factory or workshop is held in *Ritchie v. People*, 154 Ill. 98, 29 L. R. A. 79, to be unconstitutional as an arbitrary infringement of the right of individuals to make contracts, which is not justified by the police power.

That a hotel keeper is not liable for a theft by his night clerk, from the hotel safe, of money of a regular boarder who has lived in the house for some months, if ordinary care and diligence were used in employing the clerk, is decided in *Taylor v. Downey* (Mich.) 29 L. R. A. 92; and with the case is a note on the liability of a bailee for the wrongful appropriation by his servant of the thing bailed.

Occupancy of Wild Animals.—A man may acquire property in wild animals by killing or capturing them, provided that in so doing he is not a trespasser on another man's land. For title to property created by the act of reducing a thing into possession necessarily implies a reduction into possession effected by an act which is not in any way of a wrongful nature. Hence it follows that when A, a trespasser, kills a hare, *e. g.* on the land of B, A acquires no title to the hare, but the law makes it the property of B, the land owner, *ratione soli*. This was so decided in England in *Blades v. Higgs*, 11 H. of L. Cas. 621; and the law is so laid down in the United States in *Rexroth v. Coon*, 15 R. I. 35 (2 Am. St. Rep. 865). See also *Gillett v. Mason*, 7 Johns. 16; 2 Schouler Pers. Prop. sec. 17, note 3. But in Cooley on Torts (1st ed.) p. 436, the opinion is expressed that in the United States the title to a wild animal, following the civil law rule, would be held to be in the captor, even when such captor is a trespasser on another's land, citing *Taber v. Jenny*, 1 Sprague 315. *Sed quaere.* That A has no right, on the plea of destroying vermin, to hunt foxes, &c. on B's land without his consent, is held in England in *Paul v. Summerhayes*, 4 Q. B. D. 9, disapproving *Gundry v. Feltham*, 1 T. R. 334. And the law in the United States is to the same effect. *Glenn v. Kays*, 1 Bradw. (Ill.) 479; Bishop, Non-Contract Law, sec. 1248.

Construction of Express Warranty of "Soundness" of a Horse.—It was once held in England that a disease which was not calculated *permanently* to render a horse unfit for use, or *permanently* to diminish his usefulness, but which with ordinary care could be soon cured, did not amount to unsoundness so as to constitute a breach of warranty. See *Bolden v. Brogden*, 2 M. & R. 113, *per* Cole-

ridge, J. But in *Coates v. Stevens*, 2 M. & R. 137, and *Kiddell v. Burnard*, 9 M. & W. 668, the rule is thus laid down by Parke, B.: "I have always considered that a man who buys a horse warranted sound, must be taken as buying him for immediate use, and has a right to expect one capable of that use, and of being immediately put to any fair work the owner chooses. The rule as to unsoundness is that if at the time of the sale the horse has any disease which either actually does diminish the natural usefulness of the animal so as to make him less capable of work of any description, or which in its ordinary progress will diminish the natural usefulness of the animal; or if the horse has, either from disease or accident, undergone any alteration of structure that either does at the time, or in its ordinary effects will diminish the natural usefulness of the horse, such horse is unsound." The rule laid down by Parke, B., is now the law of England; and the law of the United States is in accord with it. Under it any disease is unsoundness, however slight and curable, if it prevents the buyer from using the animal *at once*; though "if the disease is slight the unsoundness is proportionally so, and so also ought to be the damages." Parke, B., in *Kiddell v. Burnard*, *supra*. For a full discussion of the rule as to unsoundness, and also of the various diseases and defects which are considered to amount to unsoundness, see 53 Am. Dec. 173–179, note to *Roberts v. Jenkins*, 21 N. H. 116; Benj. on Sales, sec. 619–20; 2 Schoul. Pers. Prop., secs. 339–341, and notes.

TITLE BY CONFUSION.—This doctrine applies when one owner of goods (solid or liquid) so mixes them with the goods of another that the identity of the respective goods is lost in the mass. The rule then is that if the commingling was *wilful* or *wrongful*, and the goods are of unequal value, the innocent party whose goods have thus been *confused*, will have title to the whole mass. 2 Bl. Com. (405); Pattee's Cases on Personalty, 145. Thus in *Beach v. Schmultz*, 20 Ill. 186, where lumber consisting of different kinds and qualities had been confused, so as to be incapable of identification, it was said by the court: "Gray then having wrongfully produced this confusion [of his lumber with that of Schmultz] by an unauthorized intermixture, necessarily forfeits his right to the whole, and the plaintiffs in error, his creditors, can have no right or claim to levy an attachment upon it. The court could not do otherwise than find for Schmultz, the defendant in error, that it was his property." And in "The Idaho," 93 U. S. 575, 585, it is said: "All the authorities agree that if a man wilfully and wrongfully mixes his own goods with those of another, so as to render them undistinguishable, he will not be entitled to his proportion, nor to any part of the property. Certainly not unless the goods of both owners are of the same quality and value. Such intermixture is a fraud. And so if the wrong-doer confounds his own goods with those he suspects may belong to another, and does this with intent to mislead or deceive that other, and embarrass him in obtaining his right, the effect must be the same."

But in order to have a case of "confusion" at all, it is indispensable that the identity of the goods should be lost in the mass so as to be no longer distinguishable. Thus there would be no occasion for the doctrine of confusion if herds of cattle driven together had different brands, or bales or boxes distinct marks of ownership; for, in the language of Schouler (2 Schoul. Pers. Prop. sec. 43): "So